IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

Crl.MC.No. 2279 of 2007()

CC.378/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED:

MUHAMMED AHAMMED ULLI ALIAS
MUHAMMED KUNHI, AGED 55 YEARS, S/O. AMU HAJI,
'MAIMOONA MANZIL', MUTTOM KADAPPALAM, VENGARA P.O.
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT:

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1. K. SUBAIR, S/O. KHASIM PILLA,
AGED 49 YEARS, K.S.J. MANZIL, CHANGAMKARA,
P.O. THIRUVANANTHAPURAM, THIRUVANANTHAPURAM DIST.

2. STATE - REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2279 OF 2007

Dated this the 17th day of July, 2007

ORDER

The petitioner faces indictment in a prosecution, inter alia, under Sec.420 of the IPC. Cognizance has been taken on the basis of a final report submitted by the police. The petitioner had entered appearance and was enlarged on bail. But the petitioner could not appear before the learned Magistrate on subsequent dates of posting. Consequently, a non-bailable warrant of arrest has been issued against the petitioner. According to the petitioner, he is absolutely innocent. Hearing on the question of charge has not been undertaken by the learned Magistrate so far and no orders have been passed under Sec.239/240 of the Cr.P.C. The petitioner is employed abroad. His absence is not wilful; but is due to reasons beyond his control. The learned Magistrate

has taken coercive processes against the petitioner.

2. The short prayer of the petitioner is that the petitioner may be permitted to appear before the learned Magistrate through counsel and claim discharge. If the learned Magistrate takes the view that the charges are liable to be framed, the petitioner shall appear before the learned Magistrate within a period of three months. The coercive process under Secs.82 and 83 of the Cr.P.C. may not be permitted to proceed further until such an opportunity is given to the petitioner. This, in short, is the prayer.

3. The petitioner had entered appearance and was being represented by counsel. The application filed by his counsel was rejected and a non-bailable warrant of arrest was issued against the petitioner. I find no reason why insistence should be made on the personal presence of the petitioner when the prayer is for discharge under Sec.239/240 of the Cr.P.C.

4. Considering all relevant circumstances in this case, I am satisfied that a direction can be issued to the learned Magistrate to keep the non-bailable warrant of arrest issued against the petitioner pending till 17/10/07. In the meantime, the petitioner shall be permitted to appear through pleader and stake his claim for discharge. The learned Magistrate shall

consider such plea for discharge of the petitioner and pass appropriate orders under Sec.239/240 of the Cr.P.C. Thereafter, only if the personal presence of the petitioner is necessary for framing charge, need the petitioner be directed to appear after 17/10/07.

5. This Crl.M.C. is, in these circumstances, allowed and the above directions are issued.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge